

FISCAL NOTE

SB 157 - HB 601

March 19, 2007

SUMMARY OF BILL: Increases the penalty for the offense of rape of a child from a Class A felony with a maximum sentence of 60 years to life imprisonment or life without parole for a second or subsequent conviction if one conviction occurred on or after July 1, 2007. Increases the penalty for a second conviction of the offense of aggravated rape of a child from a Class A felony with a maximum of 60 years to a capital offense punishable by death, life imprisonment, or life without parole.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$7,910,400 / Incarceration*
\$244,600 Recurring
\$18,900 One-Time

Other Fiscal Impact – It is estimated that an average of one offender per year will receive a death sentence. If a death sentence offender serves an average of 20 years before the sentence is carried out, there will be no significant additional incarceration costs for the death-sentenced offender, apart from the cost of the execution. The cost of executing each inmate will exceed \$15,000. The cost to the state of trials and appeals from death-sentenced offenders is substantially higher than for other cases. It is estimated that the additional cost of trials and appeals from death sentences will exceed \$750,000 for each case.

Assumptions:

- An average of 64 persons have been convicted of rape of a child in each of the past five years, according to the Administrative Office of the Courts (60), and the Department of Correction (DOC) (68). The average age of each offender is 39 years, and the life expectancy of each offender is 70 years.
- Based on the current inmate population, approximately 50% (32) have two or more offenses and would serve additional time on their sentences.
- Persons convicted of this offense currently serve an average of 20 years. One of the 64 offenders will receive a death sentence. Each non-death sentenced offender will serve an average of 31 years.
- Sixty-three persons will be convicted for the offense of rape of a child in the first year and will receive a non-death sentence. Population growth of 1.09 percent per year will result in four additional offenders serving additional time in the tenth year after the sentence increase is added to time currently served. The

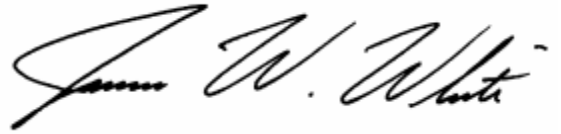
maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 36 offenders serving additional time on their sentences.

- Thirty-six offenders will serve an additional 30 years (an increase from 20 years to 50 years). The cost per inmate at 20 years is \$439,468.80 (\$60.16 x 7,305 days). The cost per inmate at 50 years is \$1,098,672 (\$60.16 x 18,262.50 days). The cost per inmate in the tenth year is \$219,734.40 (\$60.16 x 3,652.50 days). The total additional operating cost for 36 offenders in the tenth year is \$7,910,438.40 (\$219,734.40 x 36).
- Currently those offenders convicted of rape of a child are classified as a “child rapist” and are required to serve 100% of their sentence. Imprisonment for life will be a lesser sentence for “aggravated rape of a child” than for “rape of a child” because an offender convicted of “aggravated rape of a child” would be eligible to receive sentence credits.
- Public defenders and district attorneys general will require additional resources for trial and appeal of additional death and life without parole cases. Supreme Court rules require appointment of two defense attorneys in each death penalty case, and specialized training. Reimbursement rates for appointed defense counsel are higher in death cases. Attorneys handling death cases are subject to greater limitations on their caseloads, requiring additional attorneys to handle other cases.
- Recurring costs of \$244,600 reflect two additional assistant public defender positions and one assistant district attorney position including salaries, benefits, and other related costs. One-time costs of \$18,900 reflect the computer equipment, furniture, and other related costs.
- Tennessee has executed two inmates in the past 47 years. One execution occurred in 2000, at a cost in excess of \$11,000. The second execution occurred in 2006, at a cost in excess of \$15,000.
- The state incurs substantial out-of-pocket expenses in death-sentence trials and appeals. These include costs of appointed attorneys, expert witnesses, investigation, and related matters. These additional costs are estimated to exceed \$750,000 in each case.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large, stylized "J" and "W".

James W. White, Executive Director